IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 985 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE R.P.DHOLAKIA

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HEMUJI RANAJI & 7 - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR SV RAJU for Appellant(s) : 1 – 8.
MR MAHENDRA K PATEL for Appellant(s) : 1,
MR RC KODEKAR, APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA

and

HONOURABLE MR.JUSTICE MD SHAH

Date : 13/12/2006

ORAL ORDER

(Per : HONOURABLE MR.JUSTICE R.P.DHOLAKIA)

1. The present appeal has been filed by the appellants-original accused, who were convicted and sentenced to RI for life and fine of Rs.250/-, in default, 3 months RI for the offence punishable under Sec.302 read with Sec.149 of IPC, five years RI and fine of Rs.250/- in default, 3 months RI for the offence punishable under Sec.307 of IPC, three years RI and fine of Rs.250/- in default, 3 months RI for the offence punishable under Sec.325 of IPC read with Sec.149 of IPC, three months RI for the offence punishable under Sec.147 of IPC, three months RI for the offence punishable under Sec.148 of IPC and six months RI for the offence punishable under Sec.37(1)(a) read with Sec.135 of B.P.Act, vide judgment and order dated 11-8-1997 passed by the learned Addl. Sessions Judge, Surendranagar. All the sentences were ordered to run concurrently.
2. Previously, in this matter, learned counsel, Mr.S.V.Raju was appearing on behalf of the appellant Nos.2 to 8 and learned counsel, Mr.Mahendra K.Patel, was appearing on behalf of appellant No.1. Thereafter, Mr.Mahendra K.Patel has filed Vakalatnama on behalf of all the appellants.
3. Before proceeding with the matter, it is

required to be noted that learned APP has drawn our attention that during the pendency of this appeal, appellant No.2 Gugabhai Talshibhai has expired on 27-7-2000 while appellant No.5-Amra @ Amrut Jethaji and appellant No.8-Navghan Gugabhai are absconding till date whereas accused Thakor Hemuji Ramaji is on temporary bail at present.

4. Short facts of the prosecution case are that on 10-12-1995 at about 9.00 a.m., deceased and other victims were about to start masonry work in the house of deceased Mohanbhai Ganeshbhai situated in Vasavadi Village, Dasada Taluka, Surendranagar District and five old persons of the Village were sitting in front of the temple i.e. chora which is situated just opposite to the house of the deceased. At that time, present appellants-accused numbering eight came shouting from their residential area known as Kolivas towards the house of the deceased with deadly weapons such as gun, tamancha(country made revolver), spear, dharia, axe, stick, etc. in their hands. First they threw stones and thereafter, assaulted the deceased and other persons working in front of above referred house. It is further the case of the prosecution that the appellant No.2, Gugabhai

Talshibhai, who was having gun in his hand, fired two gun shoots as a result of which, Mohanbhai Ganeshbhai received one gun shoot injury on his vital part of the body i.e. chest and Vashram Mahadev also received gun shoot on his leg. The appellant No.3-Kantibhai Gugabhai who was having gun in his hand fired from his gun causing injuries to Jivabhai Malubhai on his left knee and the complainant on his upper foot. The appellant No.6-Nanjibhai Gugabhai also fired with the country made revolver (tamancha) causing injuries to Vashram Mahadev on his left thigh. When Kanubhai Gugabhai was trying to intervene and save the injured persons, the appellant No.7-Rasik Dhanji who was having spear in his hand gave blow with it to Kanubhai Gagabhai causing injuries on his right hand. Thereafter, the accused went back to their locality. People of the Village who gathered there took all the three seriously injured persons into the Patdi hospital in a tractor. On examination, the doctor at the Patdi Hospital declared Mohanbhai Ganeshbhai as dead while other two injured were advised to take further treatment and therefore, they took the injured to V.S.Hospital at Ahmedabad. During that period, doctor informed Jinjuvada Police Station on

telephone regarding the incident and same has been noted down as vardhi entry No.8 at 11.10 a.m., Thereafter, he deputed two police personnel and thereafter, complaint of Parbhatbhai Vallabbhai was recorded there at the Patdi Hospital itself. Thereafter, they made arrangements for inquest panchnama of the deceased Mohanbhai Ganeshbhai and also made arrangements for sending the dead body for post mortem. They started further investigation into the matter and tried to search the accused. Thereafter, the accused were arrested and ultimately sent to judicial custody. They recorded statements of various persons including the persons who were sitting on the temple chora at the time of incident which is just opposite to the house of the deceased. They also prepared panchnama of scene of offence, collected muddamal after making panchnama to that effect. Even muddamal was discovered at the instance of accused after drawing panchnama and sent to FSL for analysis. Even cloth of the deceased, injured and other person were also seized. On receipt of FSL and post mortem reports, same were kept in investigation file. Upon completion of investigation, charge sheet was submitted against the accused in the Court of learned

Judicial Magistrate (First Class), Bajana. As the offence alleged against the accused was triable exclusively by the Court of Sessions, the learned J.M.F.C.,committed the case to the Court of Sessions at Surendranagar where it was numbered as Sessions Case No.34 of 1996 and transferred to the Court of learned Addl. Sessions Judge, Surendranagar, for trial. The learned Judge framed charge against the accused. The accused pleaded not guilty to the charge and claimed to be tried.

5. To prove the case against the accused, the prosecution examined following witnesses:

1)Parbatbhai Valabhai, P.W.No.1, Ex.18, the complainant through whom, prosecution has proved complaint Ex.19.

2)Jivabhai Malubhai, P.W.No.2, Ex.20, the injured eye witness.

3)Vashram Mahadevbhai, P.W.No.3, Ex.21, the injured eye witness.

4)Kanubhai Gagabhai, P.W.No.4, Ex.22, the injured eye witness.

5)Haribhai Valubhai, P.W.No.5, Ex.23, the person who reached immediately to the place of incident at the earliest and saw the accused and injured on the spot also heard the filthy language being used by the appellants on the injured and their community even after the incident.

6)Arjanbhai Malabhai Rabari, P.W.No.6, Ex.24,

the independent witness, who was sitting on chora along with other four persons in whose presence, incident in question had taken place.

7)Gopalbhai Somabhai Makwana, P.W.No.7, Ex.26, Medical Officer, Patdi Community Health Centre, who examined and treated the injured persons, declared Mohanbhai Ganeshbhai as dead, issued injury certificate in respect of injured persons treated by him and also the doctor who performed the post mortem of deceased Mohanbhai Ganeshbhai and issued post mortem note Ex.31.

8)Prosecution witnesses Nos.8 to 32 are panchas of various panchnamas, who deposed during the course of their official duties either as expert or panchas or Police Officers.

Prosecution also relied on various documentary evidence including FIR, panchnama of scene of offence, discovery panchnama of weapon at the instance of accused, panchnama of arrest of all the accused, panchnama of search and seizure, panchnama of recovery of clothes of the deceased which has been produced by the Constable and seized, etc. Prosecution also placed reliance upon Station diary Entries Nos.8,9,12 and 13 regarding the telephonic message given by the concerned

Medical Officers to the concerned Police Station about the incident in question. On submission of closing purshis by the prosecution, learned Addl. Sessions Judge recorded the further statement of the accused under Sec.313 of Cr.P.C. Thereafter, on hearing the learned advocates appearing for the respective parties, learned Addl. Sessions Judge, Surendranagar, delivered the impugned judgment, whereby the appellants were convicted and sentenced to suffer for life. Separate sentences were also awarded under other sections also and all the sentences were ordered to run concurrently.

6. We have heard learned counsel for the appellants, Mr.Mahendra K.Patel and learned APP, Mr.Kodekar at length.

7. Mr.Mahendra K.Patel has taken us through the oral as well as documentary evidence of various important witnesses mainly, complainant, all injured eye witnesses and also independent eye witness P.W.6, Ex.23, who was sitting just opposite to the place of incident i.e. on chora along with other four persons. He has also taken us through station dairy entries, FIR, panchnama of secne of offence, injury certificates, discovery panchnama, reports of FSL and post mortem etc. and also relevant portion of the judgment delivered by the learned Addl.

Sessions Judge.

8. It is mainly argued by him that there is a delay in lodging the FIR. According to him, the incident was a free fight between two groups wherein prosecution has failed to establish the illegal assembly. It is further argued that individual act of each accused is required to be taken into consideration by this Court and the person who was simply present at the place of incident and did not play any role should be given benefit and is required to be acquitted. There was enmity between two communities but all innocent persons of one community have been falsely involved into the crime in question. Taking us through the relevant cross examination done by his counterpart at the court below, he has argued that at the time of incident, lot of people gathered out of which, somebody fired which resulted into the offence of Sec.302 IPC for which, all the appellants cannot be held guilty. The accused who played particular role in causing the incident of Sec.302 should be held guilty and other accused should be acquitted. Ultimately, he has concentrated his arguments on the age of the appellants and prayed that some sympathy be shown towards them.

9. Learned APP, Mr.Kodehar has taken us through the evidence relied on by the learned counsel

for the appellants and also towards the evidence of ballistic expert as well as the contentions dealt with and findings recorded by the court below while delivering the impugned judgment. It is mainly contended that the incident in question has taken place in broad day light at about 9.00 a.m. in the heart of the Village having the population of 3000 persons and, therefore, question of misidentification does not arise. At the time of incident, there were 5 independent persons sitting on chora out of which, the person who was examined by the prosecution fully supported say of the prosecution as the incident has taken place in front of their eyes just opposite to chora and, therefore, prosecution has got support from the evidence of independent witness also. It is also argued that though no motive is required to be established in this type of case, motive is also established by the prosecution by stating that there was a dispute of protecting the agricultural field of Village people. As per the prosecution case, previously contract for the same was given to the appellants, but as they were indulging in other activities, instead of protecting the crop, they themselves were taking away the same and, therefore, contract was terminated which resulted into the present incident.

Since prosecution is able to establish the guilt against the appellants beyond reasonable doubt, it is prayed that the judgment and order of conviction and sentence do not require to be interfered with.

10. We have given thoughtful consideration towards the arguments advanced and the submissions canvassed by the learned counsel for the respective parties and also gone through the evidence shown to us by them.

11. It reflects from the evidence and the impugned judgment that the present appellants-accused are staying in the same Village in which injured and the victim are residing but in Kolivas area. It is also established that there was a dispute regarding the contract for protection of the agricultural field of the Village. Previously, the said contract was given to the accused, however, since they were not acting in the interest of the Villagers, their contract was terminated and there were strange relations existing between them resulting into the incident in question. Thus, the prosecution is able to establish the motive in the commission of offence. It is also evidenced from the evidence of four injured eye witnesses as well as from the evidence of independent witness, P.W.No.6, who was sitting on chora just opposite to the

place of incident along with four other persons. It is further established from the evidence of prosecution that the incident in question has been taken place in front of the house of deceased Mohanbhai Ganeshbhai situated opposite to the chora. It is also established that construction of the said house was going on and, therefore, all injured and deceased Mohanbhai were there at about 9.00 a.m. It is also proved beyond reasonable doubt that all the accused have gathered in their vicinity i.e Kolivas and they marched towards the house of Mohanbhai Ganeshbhai along with deadly weapons. As per the evidence on record, appellant No.2-Gugabhai Talshibhai and Kantibhai Gugabhai were having gun in their hands, Nanjibhai Gugaji was having country made revolver (tamancha) in his hand and other appellants were having spear, dharia, axe, stick. etc. in their hands. All the witnesses have categorically deposed to that effect and have specifically stated which accused was having which weapon in their hands. It is also deposed by them that all the appellants-accused started marching along with the above deadly weapons in their hands and reached near the chora. First they threw stones and appellants who were having gun and tamancha had fired from them. Gugabhai Talshibhai

who was having gun in his hand used his gun as a result of which, Mohanbhai Ganeshbhai received first pallet hit in his chest resulting into an offence under Sec.302 IPC. Nanjibhai also opened fire from his tamancha which hit Vashrambhai on his left knee causing him pallet injury and thereafter, Gugabhai Talshibhai also caused gun shoot injury on Vashrambhai on his sole. Kantibhai also opened fire causing injuries to Jivabhai Malubhai on his left knee and also to complainant Parbhatbhai. Appellant-accused No.7 Rasik Dhanji gave spear blow to Kanubhai Guga when he tried to intervene and save the injured. Other accused also used their respective weapons and all the accused remained as members of illegal assembly from the vicinity i.e. Kolivas till the end. During that incident and thereafter also till they reach home, all the appellants-accused remained together as members of illegal assembly. Injury certificates and the post mortem note also support the say of the prosecution that the injuries received by the injured and the deceased were the injuries caused by gun shoot or tamancha or with other deadly weapons and most of the injuries were on vital parts of the body. It is required to be noted that except prosecution witness No.6, all are injured persons and therefore,

their presence cannot be discarded especially when they are Villagers and were about to start their masonry work there. Prosecution also gets support from the evidence of independent witness, P.W.6. He categorically supported the say of the prosecution as to the role played by each of the appellants-accused and the injuries received by the injured and the deceased. Prosecution also gets support from the medical evidence and also evidence of ballistic expert. Discovery panchnama also supports the say of the prosecution. Apart from the above, FSL report also is in favour of the prosecution.

12. Learned counsel for the appellants is not in a position to establish any points which turtle the evidence of the above referred witnesses relied on hereinabove. Thus, evidences of all the witnesses are quite natural and are trustworthy inspiring confidence. Once presence of the appellants with deadly weapons along with their role being members of illegal assembly till the last has been established, individual act of each accused is not required to be seen though the individual act has been established.

13. Looking to the seriousness of the offence having committed by each of the appellants-accused, age is not the criteria to be taken

into consideration. When it has been proved beyond reasonable doubt that the appellants are guilty of offence punishable under Sec.302 read with Sec.149 along with other Sections of IP Code and also when minimum sentence has been awarded by the court below, we are unable to interfere with the judgment and order of conviction recorded by the court below. We are therefore of the opinion that the appeal of the appellants is required to be dismissed.

14.Appeal is hereby dismissed.

[R.P.DHOLAKIA,J.]

[M.D.SHAH,J.]

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